BILL NO. S-89-09-09

SPECIAL ORDINANCE NO. S-151-89

AN ORDINANCE approving Contract **FOR RES. 6128-89, WATER CONSTRUCTION MAINTENANCE DEPARTMENT STREET CUTS PKG. XI** between **GAINES CONSTRUCTION COMPANY** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract **FOR RES. 6128-89, WATER CONSTRUCTION MAINTENANCE DEPARTMENT STREET CUTS PKG. XI** by and between **GAINES CONSTRUCTION COMPANY** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety, is hereby ratified, and affirmed and approved in all respects, respectfully for:

the improvement and restoration of 63 water restoration cuts in the Southeast Quandrant of Fort Wayne;

involving a total cost of Fifty-Nine Thousand Nine Hundred Fourteen and no/100 Dollars ($59,914.00).

SECTION 2. Prior Approval has been requested from Common Council on September 6, 1989. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Thomas P. Henry
Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay
J. Timothy McCaulay, City Attorney

RESOLUTION NO. 6128-89

WATER MAINTENANCE PACKAGE NO. XI

QUAD	PERMIT#	ADDRESS	CUT SIZE	TYPE	J/L	PK-STRIP-RE
S/E	24016	BARR ST. 3622	5 X 10	SIDEWALK 4"	-	2 X 3
S/E	21895	BOWSER @ MCKINNIE	44 L.F.	CURB II-A	-	1 X 32
S/E	21895	BOWSER @ MCKINNIE	22 X 27	ST.PAVMT.9"	12	1 X 44
S/E	23333	CASINO DR. 6600	5 x 35	SIDEWALK 4"	-	5 X 20
S/E	23333	CASINO DR. 6600	23 L.F.	CURB I-B	-	2 X 2
S/E	NONE	CHADDSFORD 6230	8 X 19 (2)	ST.PAVMT.9"	3	-
S/E	NONE	CHADDSFORD 6230	13.5 X 57.5	ST.PAVMT.9"	17	1 X 25
S/E	NONE	CHADDSFORD 6230	13.5 X 20.3	ST.PAVMT.9"	9	-
S/E	NONE	CHADDSFORD 6230	5 X 5 X 2	WINGWALK 6"	-	-
S/E	NONE	CHADDSFORD 6230	8 X 8 X 3.14 (4)	WINGWALK 6"	-	-
S/E	NONE	CHADDSFORD 6230	5 x 16	SIDEWALK 4"	-	-
S/E	NONE	CHADDSFORD 6230	5 x 9	DRIVE APP.6"	-	-
S/E	NONE	CHADDSFORD 6230	5.5 x 12 /2-4'FL.	DRIVE APP.6"	-	-
S/E	24218	CLOVERBROOK 5230	5 X 17	DRIVE APP.6"	-	1 X 10
S/E	24218	CLOVERBROOK 5230	13.6 X 20.3	ST.PAVMT.9"	9	1 X 7
S/E	24218	CLOVERBROOK 5308	17 X 14.4	DRIVE APP.6"	-	-
S/E	24218	CLOVERBROOK 5308	5 X 19	DRIVE APP.6"	-	1 X 55
S/E	24218	CLOVERBROOK 5308	5 X 8	SIDEWALK 4"	-	-
S/E	24218	CLOVERBROOK 5308	5 X 17	DRIVE APP.6"	-	-
S/E	NONE	DOWNINGTON 6102	5.5 X 10	DRIVE APP.6"	-	1 X 5
S/E	23222	DOWNINGTON @ KIMBERTON	5 X 13	SIDEWALK 4"	-	1 X 13
S/E	23222	DOWNINGTON @ KIMBERTON	5 X 16.6	SIDEWALK 4"	-	1 X 16.6
S/E	23222	DOWNINGTON @ KIMBERTON	13.5 X 20.2	ST. PAVMT.9"	9	-
S/E	23222	DOWNINGTON @ KIMBERTON	9 X 9 X 3.14 (4)	WINGWALK 6"	-	-
S/E	23222	DOWNINGTON @ KIMBERTON	7.5 X 20.2 (2)	ST.PAVMT.9"	2	-
S/E	NONE	DREXEL 2323	25 L.F.	CURB I-B	-	1 X 25
S/E	25084	DREXEL @ WAYNE TRACE	13.5 X 36	ST.PAVMT.9"	12	1 X 17
S/E	25070	MANFORD @ FRUEHAUF	13.5 X 14	ST.PAVMT.9"	8	1 X 5
S/E	22534	MAUMEE 1017	6 X 28.6	SIDEWALK 4"	-	2 X 28.6
S/E	23391	MAUMEE 1251	5.5 X 8.4	CURBFACE WALK	-	-
S/E	23146	MAUMEE @ COMPARET	10.5 X 11	CURBFACE WALK	-	1 X 5
S/E	23146	MAUMEE @ COMPARET	3.5 X 7 (2)	CURBFACE WALK	-	-
S/E	22349	OLIVER 3501	5.7 X 14	CURBFACE WALK	-	1 X 14
S/E	2822	PAULDING RD. 1420	20.5 L.F.	CURB 11-A	-	2 X 20.5
S/E	2822	PAULDING RD. 1420	14 X 20.5	ST.PAVMT.9"	10	-
S/E	2822	PAULDING RD. 1420	5 X 14	REMOVAL ONLY	-	5 X 14
S/E	24411	PAULDING @ FRUEHAUF-TURTL CR.	12.5 X 7	CURBFACE WALK	-	1 X 2
S/E	24411	PAULDING @ FRUEHAUF-TURTL CR.	10 X 11	ST.PAVMT.9"	9	-
S/E	25493	PLAZA 4209	5.5 X 12	CURBFACE WALK	-	1 X 12
S/E	24539	PONTIAC ST.E. 1927	5.5 X 25	CURBFACE WALK	-	1 X 20
S/E	24264	REED ST. 4720 (PRIORTY)	6 X 12 /2-4'FL.	DRIVE APP.6"	-	1 X 10
S/E	24264	REED ST. 4720 (PRIORTY)	16 L.F.	CURB 11-A	-	1 X 16
S/E	24264	REED ST. 4720 (PRIORTY)	9.5 L.F.	CURB 11-A	-	1 X 9.5
S/E	NONE	REYNOLDS ST. 3100 BL.	13.5 X 14.5	ST.PAVMT.9"	8	1 X 5
S/E	NONE	REYNOLDS ST. 3100 BL.	14.5 L.F.	CURB 11-A	-	-
S/E	NONE	REYNOLDS ST. 3100 BL.	16.5 L.F.	CURB 11-A	-	1 X 16.5
S/E	NONE	REYNOLDS ST. 3100 BL.	13.5 X 20	ST.PAVMT.9"	10	-
S/E	24148	REYNOLDS ST. 3102	13 X 20.5	ST.PAVMT.9"	9	-
S/E	24148	REYNOLDS ST. 3102	7.5 X 12	DRIVE APP.COMM.8"	-	1 X 5
S/E	24148	REYNOLDS ST. 3102	3 L.F.	CURB 11-A	-	1 X 3
S/E	23668	REYNOLDS ST. 3626	13.5 X 40	ST.PAVMT.9"	13	-
S/E	23668	REYNOLDS ST. 3626	27.5 L.F.	CURB 11-A	-	1 X 27.5
S/E	21891	SOUTH ANTHONY BLVD. 2200 BL.	12 X 16	DRIVE APP.COMM.8"	8	-
S/E	21837	SOUTH ANTHONY BLVD. 5515	12 X 30	ST.PAVMT.9"	17	-
S/E	21837	SOUTH ANTHONY BLVD. 5515	12 X 30	ST.PAVMT.9"	17	-
S/E	24935	WINTER ST. 4106/08 (PRIORTY)	3 L.F.	CURB III	-	-
S/E	24935	WINTER ST. 4106/08 (PRIORTY)	5 X 14	DRIVE APP.6"	-	1 X 20
S/E	24935	WINTER ST. 4106/08 (PRIORTY)	5.5 X 12	DRIVE APP.6"	-	-
S/E	24935	WINTER ST. 4106/08 (PRIORTY)	5 X 5	SIDEWALK 4"	-	-
S/E	24308	YORKSHIRE DR. 5406 (PRIORTY)	5.2 X 22.5 /2-4'FL.	DRIVE APP.6"	-	1 X 10
S/E	24308	YORKSHIRE DR. 5406 (PRIORTY)	5 X 17	DRIVE APP.6"	-	-
S/E	24308	YORKSHIRE DR. 5406 (PRIORTY)	9 X 13.6	DRIVE APP.6"	-	-
S/E	24308	YORKSHIRE DR. 5406 (PRIORTY)	13.6 X 40	ST.PAVMT.9"	13	1 X 12

CONTRACT NO. 6128-89

WATER CONSTRUCTION MAINTENANCE DEPT. STREET CUTS PACKAGE XI(89)

BOARD ORDER NO. 65-89 WORK ORDER NO. 10,786

THIS CONTRACT made and entered into in triplicate this 23rd day of August, 1989, by and between GAINES CONSTRUCTION CO., INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

RES. NO. 6128-89 WATER CONSTRUCTION MAINTENANCE DEPT. STREET CUTS PACKAGE XI(89)

all according to 6128-89, Drawing No. _____, Sheets _____, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of $ 59,914.00. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department

of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after comple-

tion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. Advertisement for Bids, for Contract No. 6128-89.
b. Instructions to Bidders for Contract No. 6128-89.
c. Contractor's Proposal Dated 7/19/89.
d. Ft. Wayne Engr. Dept. Drawing #_____.
e. Supplemental Specifications for Contract No. 6128-89.
f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
h. Prevailing Wage Scale.
i. Performance and Guaranty Bond.
j. Labor and Material Payment Bond.
k. Minority/Female Employment Hourly Utilization.
l. Right-of-Way Cut Permit.
m. Comprehensive Liability Insurance Coverage.
n. MBE/WBE Committment Form.
o. _____
p. _____

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insuror acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract within 9/30/89 consecutive calendar days after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

(CONTRACTOR)

BY: Henry Gaines Sr

_____, President

BY: Darryl Raines

_____, Secretary

CITY OF FORT WAYNE, INDIANA

BY: _____
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS & SAFETY

_____
Charles E. Layton
Director of Public Works

_____
Michael McAlexander
Director of Public Safety

_____
Douglas M. Lehman
Director of Administration & Finance

ATTEST:

_____
Helen V. Gochenour, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA:

SS:

COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said County and State, this 21st day of August, 1989, personally appeared the within named Henry & Darryel Gaines, who being by me first duly sworn upon their oaths say that they are the President and Secretary respectively, of Gaines Const. and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Gaines Const. for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Carolyn S Eschmann
NOTARY PUBLIC

Carolyn S. Eschmann
Type or Print Name of Notary

MY COMMISSION EXPIRES: 6-16-91

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 23rd day of Aug., 19 89, personally appeared the within named Paul Helmke, Mayor of the City of Fort Wayne; Charles E. Layton, Michael McAlexander and Douglas M. Lehman, members of the Board of Public Works and Safety, City of Fort Wayne, Indiana; and Helen V. Gochenour, Clerk of the Board of Public Works and Safety, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Carolyn S. Eschmann
NOTARY PUBLIC

Carolyn S. Eschmann
Type or Print Name of Notary

My Commission Expires: 6-16-91

Approved by the Common Council of the City of Fort Wayne on day of _____, 19_____.

Special Ordinance No._____.

BOND SBP 12058951

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A312

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
GAINES CONSTRUCTION CO., INC.
217 W. WASHINGTON CENTER ROAD
FORT WAYNE, INDIANA 46825

SURETY (Name and Principal Place of Business):
Indiana Lumbermens Mutual Insurance Company
5550 W. Touhy Avenue
Skokie, Illinois 60077

OWNER (Name and Address):
THE CITY OF FORT WAYNE, INDIANA

CONSTRUCTION CONTRACT
Date:
Amount: $59,914.00
Description (Name and Location): THE CITY OF FORT WAYNE, INDIANA MAINTENANCE STREET CUT RESTORATION RES# 6128-89

BOND
Date (Not earlier than Construction Contract Date): AUGUST 7, 1989
Amount: $59,914.00
Modifications to this Bond: ☐ None ☐ See Page 6

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)
GAINES CONSTRUCTION CO., INC.
Signature:
Name and Title:

SURETY
Company: (Corporate Seal)
Indiana Lumbermens Mutual Insurance Company
Signature:
Name and Title: Jerry Bey Attorney-in-Fact

(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY—Name, Address and Telephone)
AGENT or BROKER:

Jerry Bey/Bond Brokers, Inc.
6160 North Cicero Avenue
Chicago, Illinois 60646

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this

Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		SURETY	
Company:	(Corporate Seal)	Company:	(Corporate Seal)
Signature:		Signature:	
Name and Title:		Name and Title:	
Address:		Address:	

1987

Indiana Lumbermens Mutual Insurance Company

POWER OF ATTORNEY

PRINCIPAL GAINES CONSTRUCTION COMPANY, INC, EFFECTIVE DATE AUGUST 7, 1989

217 W. WASHINGTON CENTER ROAD (STREET ADDRESS) FORT WAYNE, INDIANA 46825 (CITY) (STATE) (ZIP CODE)

CONTRACT AMOUNT $ 59, 914.00 AMOUNT OF BOND $ 59,914.00

POWER NO. SBP 12058951

KNOW ALL MEN BY THESE PRESENTS, that the Indiana Lumbermens Mutual Insurance Company, a Corporation duly organized and existing under the laws of the State of Indiana, with its principal office in the City of Indianapolis, Indiana, does hereby make, constitute and appoint

JERRY BEY State of ILLINOIS

as its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute, acknowledge and deliver any and all Bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof for and on its behalf as follows:

The obligation of the Company shall not exceed four million ($4,000,000.00) dollars.

And to bind the Corporation thereby as fully and to the same extent as if such Bonds and undertakings, recognizances, contract of indemnity, and other writings obligatory in the nature thereof were signed by the President, sealed and duly attested by the Secretary of the Corporation, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. This Power of Attorney is executed and may be revoked pursuant to and by authority granted by Article IV, Section 2-A (1) and (2) of the By-Laws of the Indiana Lumbermens Mutual Insurance Company, which reads as follows:

(1) The President or any Vice President shall have the power and authority, by and with the concurrence with the Secretary of the Corporation, to appoint Attorneys-in-Fact for purposes only of executing and attesting to Bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof, and at any time to remove any such Attorney-in-Fact and to revoke the power and authority given to him.

(2) Attorneys-in-Fact when so appointed shall have power and authority, subject to the terms and limitations of the Powers of Attorney issued to them, to execute and deliver on behalf of the Corporation any and all Bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof, and such instrument executed by any such Attorney-in-Fact shall be as binding upon the Corporation as if signed by an Executive Officer and sealed and attested by the Secretary.

IN WITNESS WHEREOF, the Indiana Lumbermens Mutual Insurance Company has caused these presents to be signed by its Vice President, attested by its Secretary and its Corporate Seal to be hereto affixed this FIRST day of JUNE 19 88.

ATTEST:

By L.W. Rodney Secretary

Indiana Lumbermens Mutual Insurance Company

By Vice President

STATE OF INDIANA } SS:
COUNTY OF MARION }

On this FIRST day of JUNE 19 88, before me personally came the individual who executed the preceding instrument, to me known, who being by me duly sworn, acknowledged the execution of the above instrument and did depose and say; that he is the therein described and authorized officer of the Indiana Lumbermens Mutual Insurance Company; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that he signed his name thereto by like order.

August 10, 1990
My Commission Expires

NOTARY PUBLIC SEAL INDIANA

Letty M. Nieten
Notary Public

STATE OF INDIANA } SS:
COUNTY OF MARION }

I, the undersigned, Secretary of the Indiana Lumbermens Mutual Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Indiana Lumbermens Mutual Insurance Company, which is still in force and effect.

This Certificate may be signed and sealed by facsimile under and by the authority of the following resolution of the Board of Directors of Indiana Lumbermens Mutual Insurance Company at a meeting duly called and held on the 12th day of June 1973.

"RESOLVED: That the use of printed facsimile of the Corporate Seal of the Company and of the signature of the Secretary on any certification of the correctness of a copy of an instrument executed by the President or a Vice President pursuant to Article IV, Section 2-A (1) and (2) of the By-Laws appointing and authorizing Attorney-in-Fact to sign in the name and on behalf of the Company Bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, with like effect as if such seal and such signature had been manually affixed and made, hereby is authorized and approved."

In witness whereof, I have hereunto set my hand and affixed the seal of said Corporation, this 7th day of AUGUST 19 89

(SEAL)

L.W. Rodney
Secretary

Form 253

BOND SBP 12058951

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A312

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
GAINES CONSTRUCTION CO., INC.
217 W. WASHINGTON CENTER ROAD
FORT WAYNE, INDIANA 46825

SURETY (Name and Principal Place of Business):
INDIANA LUMBERMENS MUTUAL INSURANCE CO.
5550 W. TOUHY AVENUE
SKOKIE, ILLINOIS 60077

OWNER (Name and Address):
THE CITY OF FORT WAYNE, INDIANA

CONSTRUCTION CONTRACT
Date:
Amount: $59,914.00
Description (Name and Location): THE CITY OF FORT WAYNE, INDIANA- MAINTENANCE STREET CUT RESTORATION RES# 6128-89

BOND
Date (Not earlier than Construction Contract Date): AUGUST 7, 1989
Amount: $59,914.00
Modifications to this Bond: ☐ None ☐ See Page 3

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)
GAINES CONSTRUCTION CO., INC.
Signature: Henry Gaines
Name and Title:

SURETY
Company: (Corporate Seal)
INDIANA LUMBERMENS MUTUAL INSURANCE CO.
Signature:
Name and Title: JERRY BEY ATTORNEY-IN-FAC

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)
AGENT or BROKER:
JERRY BEY/BOND BROKERS, INC.
6160 NORTH CICERO AVENUE
CHICAGO, ILLINOIS 60646

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		SURETY	
Company:	(Corporate Seal)	Company:	(Corporate Seal)
Signature: _____		Signature: _____	
Name and Title:		Name and Title:	
Address:		Address:	

Read the first time in full and on motion by Henry, seconded by GiaQuinta, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock M.,E.S.T.

DATED: 9-12-89.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Henry, seconded by Talarico, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	7			2
BRADBURY	✓			
BURNS	✓			
EDMONDS				✓
GiaQUINTA	✓			
HENRY	✓			
LONG				✓
REDD	✓			
SCHMIDT	✓			
TALARICO	✓			

DATED: 9-26-89.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. R-151-89.

on the 26th day of September, 19 89,

ATTEST
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
Charles S. Redd
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of September, 1989, at the hour of 11:30 o'clock A.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 2nd day of October, 19 89, at the hour of 1:15 o'clock P.M.,E.S.T.

PAUL HELMKE, MAYOR

Admn. Appr. _____

TITLE OF ORDINANCE Contract for Res. 6128-89, Water Construction Maintenance Department Street Cuts Pkg. XI

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE The Contract for Res. 6128-89, Water Construction Maintenance Department Street Cuts Package XI, is for the improvement and restoration of 63 water restoration cuts in the Southeast Quandrar of Fort Wayne. (locations attached) Gaines Construction Company is the contractor.

PRIOR APPROVAL REQUESTED 9/6/89 S 85-09-09

EFFECT OF PASSAGE Streets restored to stable and aesthetic quality

EFFECT OF NON-PASSAGE _____

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $59,914.00

ASSIGNED TO COMMITTEE _____

BILL NO. S-89-09-09

REPORT OF THE COMMITTEE ON CITY UTILITIES

THOMAS C. HENRY, CHAIRMAN
MARK E. GiaQUINTA, VICE CHAIRMAN
LONG, BURNS, TALARICO

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ approving Contract FOR RES. 6128-89, WATER CONSTRUCTION MAINTENANCE DEPARTMENT STREET CUTS PKG. XI between GAINES CONSTRUCTION COMPANY and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) ~~(RESOLUTION)~~

DO PASS	DO NOT PASS	ABSTAIN	NO REC
Mark E. GiaQuinta			
Mark E. Burns			
Samuel J. Talarico			
Thomas C. Henry			

DATED: 9-26-89.

Sandra E. Kennedy
City Clerk